



**Muthaura (Suing as the Personal Representative of the Estate of
Munene Mugo Ncacu -Deceased) v Mugo & another (Civil Application
113 of 2024) [2024] KECA 1706 (KLR) (28 November 2024) (Ruling)**

Neutral citation: [2024] KECA 1706 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION 113 OF 2024
JW LESSIT, JA
NOVEMBER 28, 2024**

BETWEEN

**FRIDAH KANJA MUTHAURA (SUING AS THE PERSONAL
REPRESENTATIVE OF THE ESTATE OF MUNENE MUGO NCACU -
DECEASED) APPELLANT**

AND

**ELIAS MICHENI MUGO 1ST RESPONDENT
BERNARD MURJITHI MUGO 2ND RESPONDENT**

*(Being an appeal from the Judgment of the Environment and Land Court at
Chuka (C. Yano, J.) delivered on the 25th April 2024 in E.L.C. Case 10 of 2020)*

RULING

1. Messrs. Nyamu Nyaga & Co. Advocates have by this application dated 2nd September 2024 brought pursuant to rule 23 of the Court of Appeal Rules sought two orders:
 - i. That this Hon. Court be pleased to grant leave to the firm of Messrs. Nyamu Nyaga & Co. Advocates to withdraw or cease acting for the respondents in this appeal.
 - ii. That costs of this application be provided for and the same be paid by the respondents.
2. The application is supported by grounds on the face of the application, and in the supporting affidavit sworn by Desderio Nyaga Nyamu advocate, for the applicant firm.
3. The background of the application is that the applicant firm represented the respondents in the Chuka ELC suit, in which the respondents were the defendants. That the suit was determined in their clients' favour. They ground the application on the fact that since the appeal was filed, the firm has contacted



the respondents several times to find out whether they were planning to engage the applicant firm to represent them in the appeal. It is averred that since the respondents have been non-committal, the applicant firm wishes to withdraw or cease acting for them.

4. Both respondents have filed a replying affidavit in which they aver that the application is improper on grounds the applicant firm is not on record for them in this appeal as to enable them file the application. That further, the instructions to act for them was extinguished and ceased with the conclusion of the trial before the trial court. They aver that the appeal is a new case all together and that therefore the application by the applicant firm is superfluous.
5. The application has been brought under rule 23(2) of the Court of Appeal Rules. It provides:

“ 23

(2) An advocate who desires to cease acting for any party in a civil appeal or application, may apply by notice of motion before a single Judge for leave to so cease acting, and such advocate shall be deemed to have ceased to act for such party upon service on the party of a certified copy of the order of the judge.”

6. The application to cease acting for a party infers that the applicant applying to cease acting was instructed to act for the respective party. That means that the application should be predicated upon a written instruction as proof there existed such an agreement/arrangement between the advocate and the client.
7. In this case, the respondents, the supposed clients to the applicant firm, have challenged the application, denying engaging the applicant to represent them in the appeal, saying that the application was superfluous as the instructions they had given to the applicant firm was to represent them in the superior court and extinguished when that case was concluded.
8. There is no response to the respondents’ replying affidavit. That means that the applicant does not contest the respondents’ position that the firm had no instructions to act for them in the appeal case. Whether or not the appeal was a new case and not a continuation of the suit before the superior court, the applicant needed to lay a basis for the application by demonstrating that it had an agreement or arrangement to act for the respondents. None was presented.
9. I have also looked at the record of the file in this matter. I see a notice of appointment of advocate whose date is not clear caused by scanning of the document. It however shows that the notice was filed on 11th August 2024. I note that the

notice is dated a month earlier than the application. It provides thus:

“NOTICE OF APPOINTMENT OF ADVOCATE

TAKE NOTICE that M/S BASILIO GITONGA, MURITTHI & ASSOCIATES ADVOCATES of P.O. BOX 1491-60200 MERU have been appointed by the Respondents herein to act on their behalf in respect of the above mentioned case. Our address of service for purposes of this suit is care of:-

M/S BASILIO GITONGA, MURIITHI & ASSOCIATES ADVOCATES
BOX 1491-60200, MERU.”



10. I have considered the application and the affidavits sworn by the applicant and the respondents. I find that in the face of the challenge raised by respondents that they gave no instruction to the applicant to represent them, I am not satisfied that the applicant has met the threshold to obtain the orders sought.

11. The result of the application is that the same lacks in merit and is accordingly dismissed with costs.

DATED AND DELIVERED AT NYERI THIS 28TH DAY OF NOVEMBER, 2024.

J. LESIIT

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

